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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TERRY L. CROSS,

12 Plaintiff,

13 v.

14 JEFFERY UTTECHT,

15 Defendant.

CASE NO. 11-5469-RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION

16 This matter comes before the court on the Report and Recommendation of Magistrate
17 Judge J. Richard Creatura. Dkt. 17. The court has considered the relevant documents and the file
18 herein. Petitioner has not filed any objections to the Report and Recommendation.

19 After considering and reviewing the record, this court concurs with the recommendation
20 of the Magistrate Judge and adds one proviso, a time limitation on Petitioner to make a decision
21 about his next course of action.

22 Therefore it is hereby
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ORDERED that the Report and Recommendation (Dkt. 17) is **ADOPTED**. Accordingly, not later than **January 2, 2012**, Petitioner is **ORDERED** to inform the court whether he chooses to:

- (1) Dismiss his unexhausted claim and proceed on his exhausted claim; or
- (2) Dismiss the entire complaint without prejudice as a mixed petition.

If Petitioner fails to inform the court as directed by January 2, 2012, the petition for writ of habeas corpus will be dismissed without prejudice.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 9th day of November, 2011.


ROBERT J. BRYAN
United States District Judge